IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT NO. 527 OF 2003

IN

SUMMARY SUIT NO. 418 OF 2001

Bank of Baroda .. Plaintiff

versus

M/s.Vijaya Founders & Engineers & ors.. Defendants

...

Mr.A.B. Shinde for the plaintiff.

Mr.K.S. Shetty for the defendant no.4.

CORAM : D.G. KARNIK,J.

DATED : 2nd March 2005.

P.C.:

1. Heard the learned counsel for the parties. This Summons for Judgement is taken out only against defendant no.4.

2. The plaintiff has filed this suit for recovery of the loan advanced to the defendant nos.1 and 2

under loan agreement as well as cash credit agreement. The defendant nos.3 and 4 are sued in capacity of the guarantors to the said loans. By filing an affidavit in reply, the defendant no.4 has denied his liability to pay.

3. In paragraph no.3(iv), the plaintiff has stated that the defendant no.1 who is the principal borrower had hypothecated in favour of the plaintiff stocks of ferrous, non ferrous, steel, aluminium castings and Book-debts. In paragraph no.4(iii) the plaintiff has further pleaded that the defendant no.1 hypothecated in favour of the plaintiff movable machinery as security towards the said loan. In paragraph no.5 of the plaint, there is a bald statement that security is not now available but there is no mention as to what happened to the security of hypothecated goods. A perusal of the reply by defendant no.1 dated 2nd September 2000 (Exhibit E1 to the plaint) to the plaintiff's notice of demand shows that the factory was insured and the plaintiff was a beneficiary under a policy of insurance. If therefore, the hypothecated security was lost due to theft or otherwise, the plaintiff prima facie was entitled to make an insurance claim.

The defendant claims that a summary suit is not maintainable as the security is available with the plaintiff. The defence raised by the defendant cannot be said to be without substance.

4. The defendant no.4 is granted unconditional leave to defend the suit. Qua the defendant no.4, the suit shall stand transferred to the list of commercial causes. The defendant no.4 file written statement within a period of one month.

D.G. KARNIK, J